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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/803,287 | 03/17/2004 | Paul J. Hindrichs | 293/057 | 5661 |

1473 7590 01/29/2007
FISH & NEAVE IP GROUP
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1211 AVENUE OF THE AMERICAS
NEW YORK, NY 10036-8704

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| EXAMINER |
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IZQUIERDO, DAVID A

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| ART UNIT | PAPER NUMBER |
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3738

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS | 01/29/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

| | | | |
|------------------------------|---------------------------------------|---|--|
| Office Action Summary | Application No. 10/803,287 | Applicant(s) HINDRICHs ET AL. | |
| | Examiner David A. Izquierdo | Art Unit 3738 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-95 is/are pending in the application.
- 4a) Of the above claim(s) 19,20,31,32,47-58 and 92-95 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18,21-30,33-46 and 59-91 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 3/14/05, 10/4/04, 07/09/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Claims 19, 20, 31, 32, 47-58 and 92-95 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 31 October 2006.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5, 8-18, 23-30, 37-40, 44, 59-64, 68-91 are rejected under 35 U.S.C. 102(b) as being anticipated by Solem et al. ("Solem")(U.S. Patent Application Publication Number 2001/0018611).

4. Solem et al discloses a method and device for treating mitral insufficiency comprising a first anchor structure (30), a second anchor structure (31), and linking structures (32, 33, 34) wherein the linking structures shortens the distance between the first and second anchor (paragraph 61) by means of flexible members (35) attached thereto. Solem further discloses use of a catheter for percutaneous implantation of the device through the coronary sinus wherein the device maybe manipulated in situ (paragraph 0024-0026).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 21, 22, 33-36, 45, and 46, are rejected under 35 U.S.C. 103(a) as being unpatentable over Solem in view of Tremulis et al. ("Tremulis") (U.S. Patent Number 7,101,395). Solem discloses a method and device for treatment of mitral insufficiency as disclosed above however Solem fails to disclose helical anchors which penetrate the tissue. Tremulis discloses helical anchors which penetrate tissue by means of a sharpened wire torquing through tissue (col. 15, lines 55-67). It would have been obvious to one of ordinary skill in the art at the time of the invention to use helical anchors as taught by Tremulis with the device to treat mitral valve insufficiency, as per Solem the motivation to combine being that the anchors of Tremulis would provide a greater anchoring force allowing for a more secure device (Tremulis: col. 15, lines 65-67). (NOTE: The elected species receives filing date of the second provisional application filed 11/10/03 because the elected species was not disclosed in the prior provisional application).

7. Claims 6,7,41-43 and 65-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Solem in view of Alferness et al. ("Alferness") (U.S. Patent Number 6,908,478). Solem discloses a method and device for treatment of mitral insufficiency as disclosed above however Solem fails to disclose a ratcheting structure between the anchors. Alferness discloses a ratcheting structure which cinches two anchors together. It would have been obvious to one of

Art Unit: 3738

ordinary skill in the art at the time of the invention to combine the ratcheting linkage of Alferness to the device to treat mitral valve insufficiency, as per Solem the motivation to combine being that the ratcheting structure would allow greater control of the tension between the devices (Alferness: Col. 5, line 55-67 and Col. 6, lines 1-9).

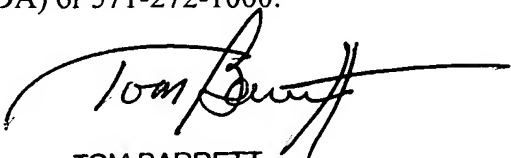
Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A. Izquierdo whose telephone number is 571-272-1943. The examiner can normally be reached on Monday through Friday from 8:00 am until 4:30 pm.

9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

David A. Izquierdo



TOM BARRETT
PRIMARY EXAMINER
TECHNOLOGY CENTER 3700